

SUMMARY ANALYSIS OF AMENDED BILL

Author: Migden Analyst: Scott McFarlane Bill Number: SB 1113
 Related Bills: See Prior Analysis Telephone: 845-6075 Amended Date: August 21, 2008
 Attorney: Patrick Kusiak Sponsor: _____

SUBJECT: Authorize Court To Award Attorney's Fees And Costs, Including Expert Witness Fees

DEPARTMENT AMENDMENTS ACCEPTED. Amendments reflect suggestions of previous analysis of bill as introduced/amended _____.

AMENDMENTS IMPACT REVENUE. A new revenue estimate is provided.

AMENDMENTS DID NOT RESOLVE THE DEPARTMENTS CONCERNS stated in the previous analysis of bill as introduced/amended _____.

FURTHER AMENDMENTS NECESSARY.

DEPARTMENT POSITION CHANGED TO _____.

REMAINDER OF PREVIOUS ANALYSIS OF BILL AS AMENDED

☒ June 18, 2008, STILL APPLIES.

☒ OTHER – See comments below.

SUMMARY

This bill would authorize a court to include costs, including expert witness fees, when awarding attorney's fees under the Code of Civil Procedure (CCP).

SUMMARY OF AMENDMENTS

The August 21, 2008, amendment changed the types of costs that may be awarded in addition to attorneys' fees. Prior to the amendment, only non-statutory costs could be awarded in addition to attorneys' fees. The August 21, 2008 amendments provide that any cost may be awarded in addition to attorneys' fees.

As a result of the amendments, the "THIS BILL" and "ECONOMIC IMPACT" discussions have been revised. The remainder of the department's analysis of the bill as amended June 18, 2008, still applies.

Board Position:

_____ S _____ NA _____ NP
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 _____ N _____ OUA ☒ PENDING

Legislative Director

Date

Brian Putler

8/27/08

PURPOSE OF THE BILL

According to the author's office, this bill is intended to return the law regarding expert witness fees and other non-statutory costs to the long-held understanding prior to a recent court decision because these costs are often critical to the outcome of public-interest cases.

EFFECTIVE/OPERATIVE DATE

This bill would be effective on January 1, 2009, and apply as of that date.

ANALYSIS

THIS BILL

This bill would authorize a court to award costs, including expert witness fees, in addition to attorneys' fees, under CCP section 1021.5. As a result, the State, when party to a lawsuit, could be required to pay expert witness fees and other costs, in addition to attorneys' fees, under CCP section 1021.5.

ECONOMIC IMPACT

The amount of this additional expenditure cannot be quantified because it depends on the outcome of pending litigation, the frequency of future relevant litigation, and on the size of future awards, all of which are unknown.

In August 2006, for the first time, a prevailing party in tax refund litigation against the FTB was awarded attorney's fees under CCP section 1021.5. Additional fee awards under CCP section 1021.5 have been awarded in two cases since that time. In these cases, there were no expert witness fees. The amount of future additional costs resulting from this bill will depend on the following events occurring:

- 1) A taxpayer prevails in a refund suit against the FTB;
- 2) The taxpayer seeks and is awarded fees and costs under CCP section 1021.5;
- 3) The court determines the taxpayer's action resulted in the enforcement of an important right affecting the public interest; and,
- 4) Expert witness fees are part of the litigating costs borne by the taxpayer.

Any additional expenditure due to this bill would be attributed to events that are expected to occur on a very infrequent basis. Therefore, it is not possible to quantify the impact in any particular year. Because this proposal applies to decisions rendered after January 1, 2009, it is possible that the State will be required to make additional expenditures in the 2008/2009 fiscal year.

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